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No. 03-1419

Supreme Court, U.S.
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In The
Supreme Court of the United States

MICHAEL FITZGERALD, TREASURER,
STATE OF IOWA,

Petitioner,

v.

RACING ASSOCIATION OF CENTRAL IOWA,
IOWA GREYHOUND ASSOCIATION, DUBUQUE
RACING ASSOCIATION, LTD., and
IOWA WEST RACING ASSOCIATION,

Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Iowa

RESPONDENTS' BRIEF IN OPPOSITION

GERALD CRAWFORD
THE CRAWFORD LAW FIRM
Two Ruan Center,
Suite 1070
601 Locust Street
Des Moines, Iowa 50309
Telephone: (515) 245-5420
Facsimile: (515) 245-5421

Attorneys for Respondent Iowa Greyhound Association

MARK MCCORMICK
Counsel of Record
THOMAS L. FLYNN
EDWARD M. MANSFIELD
BELIN LAMSON MCCORMICK
ZUMBACH FLYNN, A
PROFESSIONAL
CORPORATION
The Financial Center
666 Walnut Street,
Suite 2000
Des Moines, Iowa 50309-3989
Telephone: (515) 243-7100
Facsimile: (515) 558-0615

Attorneys for Respondent Racing Association of Central Iowa, Inc.

[Additional Counsel Listed On Inside Cover]

BEST AVAILABLE COPY

STEPHEN C. KRUMPE
O'CONNOR & THOMAS, P.C.
Dubuque Building
700 Locust Street, Suite 200
Dubuque, Iowa 52001-6874
Telephone: (319) 557-8400
Facsimile: (319) 556-1867

Attorneys for Respondent
Dubuque Racing
Association, Inc.

LAWRENCE P. MCLELLAN
SULLIVAN & WARD, P.C.
801 Grand Avenue,
Suite 3500
Des Moines, Iowa 50309
Telephone: (515) 244-3500
Facsimile: (515) 244-3599

Attorneys for Respondent
Iowa West Racing
Association

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INTRODUCTION: REASON FOR DENYING THE PETITION

The present petition for certiorari by the Treasurer of the State of Iowa involves a sequel to this Court's decision in *Fitzgerald v. Racing Ass'n*, 539 U.S. 103 (2003). In *Fitzgerald*, this Court reviewed a decision by the Iowa Supreme Court sustaining an equal protection attack on the validity of an Iowa tax statute under the Federal Constitution and the Iowa Constitution. This Court accepted jurisdiction of the case to review the federal ground pursuant to *Michigan v. Long*, 463 U.S. 1032 (1983). (App. 1). After its review, this Court held that Iowa's differential tax rate on adjusted gross receipts from slot machines at racetracks and riverboats did not violate the Federal Equal Protection Clause. On that basis, this Court ordered:

> The Iowa Supreme Court's judgment to the contrary is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

Fitzgerald, 539 U.S. at ___. (App. 8). Upon remand, the Iowa Supreme Court reconsidered its prior decision on the state constitutional claim in light of this Court's ruling on the federal constitutional issue. After doing so, the Iowa court said, "[W]e find no basis to change our earlier opinion that the differential tax rate violates Article I, Section 6 of the Iowa Constitution." *Racing Ass'n v. Fitzgerald*, 675 N.W.2d 1, 3 (2004). (App. 19).

In once again petitioning for certiorari, the Treasurer contends the Iowa Supreme Court violated this Court's mandate by applying the federal analysis but reaching a different result under the Iowa Constitution.

Because nothing in the mandate of this Court did or could require the Iowa Supreme Court to reach the same result under the Iowa Constitution as this Court did under the Federal Constitution, no federal question is presented and the petition for certiorari should be denied.

ARGUMENT

THE IOWA SUPREME COURT DID NOT VIOLATE THIS COURT'S MANDATE BY APPLYING THE RATIONAL BASIS TEST INDEPENDENTLY IN ADDRESSING THE STATE CONSTITUTIONAL CLAIM.

It was not inconsistent with this Court's mandate for the Iowa Supreme Court to exercise its exclusive prerogative to determine the constitutionality of the Iowa tax statute under the Iowa Constitution. This prerogative exists even though the Iowa Court has deemed the federal and state equal protection provisions to be identical in scope, import and purpose:

> In many instances we have deemed the federal and state due process and equal protection clauses to be identical in scope, import, and purpose. . . . However, it is the exclusive prerogative of our court to determine the constitutionality of Iowa statutes challenged under our own constitution.

Callender v. Skiles, 591 N.W.2d 182, 187 (Iowa 1999). The Iowa court in the present case reiterated its prerogative:

> While the Supreme Court's judgment on the constitutionality of Iowa's disparate tax rates under the Federal Equal Protection Clause is persuasive,

> it is not binding on this court as we evaluate this law under the Iowa Constitution.

Racing Ass'n v. Fitzgerald, 675 N.W.2d 1, 5 (Iowa 2004). (App. 22).

The exclusive authority of a state court to decide issues under its state constitution is among the powers reserved to the states in our federal system. *See* U.S. Const., Amend. X. Just as this Court is the final arbiter of disputes under the Federal Constitution, the state courts are the final arbiters of disputes under their state constitutions. Recognizing this limitation on federal power, this Court has said, "It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions." *Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940). *See also Rowan v. Runnels*, 47 U.S. 134, 138 (1847) ("Undoubtedly this court will always feel itself bound to respect the decisions of the State courts, and from the time they are made will regard them as conclusive in all cases upon the construction of their own constitution and laws."). This Court does not tell state courts how to decide issues under their state constitutions.

The Iowa Supreme Court in this case noted its right to reach a different result through its independent application of the rational basis test:

> This approach is nothing new. As noted above, this court ruled many years ago that federal decisions are persuasive, but not binding, on this court in its consideration of claims based on the Iowa Constitution. [citations] It follows, then, that this court's independent application of the rational basis test might result in a dissimilar outcome from that reached by the Supreme

> Court in considering the federal constitutional claim.

675 N.W.2d at 6. (App. 25). No doubt now exists that the Iowa court decision rests on an adequate and independent state ground. It is thus invulnerable to federal review.

The failure of the Iowa court to declare the adequacy and independence of the state ground in its initial consideration of the case has had the unfortunate but not unprecedented effect of making this Court's decision of the federal ground merely advisory.[1] This Court anticipated the possibility of such a result in *Michigan v. Long*:

> The principle that we will not review judgments of state courts that rest on adequate and independent state grounds is based, in part, on "the limitations of our own jurisdiction." *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945). The jurisdictional concern is that we not "render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." *Id.* at 126.

463 U.S. at 1042-43.

The Iowa court was "absolutely free" upon remand to reaffirm its prior judgment under the equality provision of the Iowa Constitution. *See Arizona v. Evans*, 514 U.S. 1, 8

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[1] Some of the decisions in which other courts on remand have reached a decision on state constitutional grounds that was contrary to the decision of this Court on federal constitutional grounds are collected in one of the dissenting opinions below. *See* 675 N.W.2d at 26 n. 11. (App. 65).

(1995). Indeed, "[a]pplication of the *Long* presumption has increased the incidence of nondispositive United States Supreme Court determinations – instances in which state courts, on remand, have reinstated their prior judgments after clarifying their reliance on state grounds." *Id.* at 32 (Ginsburg, J., dissenting).[2]

The Treasurer cites three cases in support of his contention that the Iowa court "sidestepped" this Court's "directive" while addressing the state constitutional question on remand. Those cases do not even remotely support his contention. They each involved mandates that were not carried out on remand. No such mandate was involved here.

In *Stanton v. Stanton*, 421 U.S. 7 (1975), this Court held that a Utah statute which established the age of majority for child support purposes at 21 for males and 18 for females violated the Fourteenth Amendment Equal Protection Clause. No valid age of majority distinction could be drawn between males and females for child support purposes. On that basis, the case was remanded to the Utah court to determine as a matter of Utah law when a parental support obligation to a daughter would terminate. *Id.* at 18-19. No state constitutional issue was

[2] When the case was here before, the Treasurer in his reply brief contended that reversal of the case on the federal ground "necessarily reverses the state constitutional adjudication based on the same analysis." (Reply brief at 6). During oral argument, members of this Court made it clear that reversal on the federal ground left the Iowa court free to make whatever decision it wished under the Iowa Constitution on remand. (Transcript of April 29, 2003 at 12-14, 44-47). The Treasurer has persisted in his remarkable argument that this Court will dictate how a state court must interpret its state constitution.

involved. On remand, the Utah Supreme Court did not consider the issue presented to it but merely decided that the statute was constitutional in fixing the female age of majority at 18. *Stanton v. Stanton*, 552 P.2d 112, 113 (Utah 1976). This Court granted review and determined that the Utah court had apparently not understood that it was to establish an age of majority standard that would treat males and females equally for support purposes. *Stanton v. Stanton*, 429 U.S. 501, 506-507 (1977). In remanding the case for that determination, the Court left the choice of the age of majority to the Utah court as an issue of state law. *Id.* at 507 n. 4.

Sumner v. Mata, 435 U.S. 591 (1982) and *Utah Pub. Serv. Comm'n v. El Paso Natural Gas Co.*, 395 U.S. 464 (1969) are also inapposite. *Sumner* involved a federal court of appeals misunderstanding of a mandate that it apply a presumption of correctness to state court findings of fact in reviewing a habeas challenge. The court of appeals on remand made an excuse for refusing to apply the presumption of correctness. This Court on review rejected the court of appeals excuse and again remanded for application of the presumption. 435 U.S. at 598-599. In *Utah Pub. Serv.*, this Court was confronted in a Clayton Act case with a failure of the federal district court to order a utility to divest itself of a company this Court had ordered be divested. This Court on review reiterated that its mandate required complete divestiture. 395 U.S. at 473.

None of the cases relied on by the Treasurer has any application here.

This Court's view of the Iowa tax statute under the Federal Equal Protection Clause could not and did not constitute a mandate to the Iowa Supreme Court to arrive

at the same result under the equality clause of the Iowa Constitution if the Iowa court employed rational basis analysis. This Court made a final and binding decision only of the federal ground. The question for the Iowa court on remand was not what result the United States Supreme Court would reach under the Iowa Constitution by employing federal analysis but, instead, what result the Iowa court would reach independently through whatever method of analysis it selected. The methodology employed by a state in interpreting its own constitution is not a matter of federal concern. Nor is the manner of its application. The Iowa court was free to choose the federal analysis, as it did, but apply it in its own way. The court used the rational basis test as defined in this Court's cases but applied it independently as a matter of state constitutional law to determine the constitutionality of the differential tax statute under the Iowa Constitution. The Iowa Supreme Court was absolutely free to say as a matter of state constitutional law that the differential tax rate flunked the Iowa court's independent administration of the rational basis test.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

MARK MCCORMICK
Counsel of Record
THOMAS L. FLYNN
EDWARD M. MANSFIELD
BELIN LAMSON MCCORMICK
ZUMBACH FLYNN, A
PROFESSIONAL CORPORATION
The Financial Center
666 Walnut Street, Suite 2000
Des Moines, Iowa 50309-3989
Telephone: (515) 243-7100
Facsimile: (515) 558-0615
E-Mail: mmccormick@belinlaw.com;
tlflynn@belinlaw.com;
emmansfield@belinlaw.com

Attorneys for Respondent Racing Association of Central Iowa, Inc.

GERALD CRAWFORD
THE CRAWFORD LAW FIRM
Two Ruan Center, Suite 1070
601 Locust Street
Des Moines, Iowa 50309
Telephone: (515) 245-5420
Facsimile: (515) 245-5421

Attorneys for Respondent Iowa Greyhound Association

STEPHEN C. KRUMPE
O'CONNOR & THOMAS, P.C.
Dubuque Building
700 Locust Street, Suite 200
Dubuque, Iowa 52001-6874
Telephone: (319) 557-8400
Facsimile: (319) 556-1867

Attorneys for Respondent Dubuque Racing Association, Inc.

LAWRENCE P. MCLELLAN
SULLIVAN & WARD, P.C.
801 Grand Avenue, Suite 3500
Des Moines, Iowa 50309
Telephone: (515) 244-3500
Facsimile: (515) 244-3599

Attorneys for Respondent Iowa West Racing Association